

Message Text

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PAGE 01 STATE 119060

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APPROVED BY L/M:KEMALMBORG

AF/E - MR. BARRETT

PM/ISO - MR. SCOTT

DOD/DAJA-IA- LT. COL. GREEN

L/PM - MR. MICHEL

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TO AMEMBASSY ADDIS ABABA

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USCINCEUR VAIHINGEN GER/ECLA

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E.O. 11652: N/A

TAGS: CASE, ET (HUNT, MSGT. LAMAR L.)

SUBJECT: US SERVICEMAN APPEARING AS A WITNESS IN
ETHIOPIAN COURT

1. ETHIOPIAN COURT IS NOT SEEKING TO EXERCISE CRIMINAL JURISDICTION WITH RESPECT TO MSGT HUNT AND CRIMINAL IMMUNITY PROVISION IN ARTICLE XVII OF 1953 DEFENSE INSTALLATIONS AGREEMENT (TIAS 2964) IS, THEREFORE, IRRELEVANT IN THIS CASE. PERSONNEL ASSIGNED UNDER 1953 AGREEMENT ARE NOT RPT NOT MEMBERS OF DIPLOMATIC MISSION AND DERIVE NO PRIVILEGES OR IMMUNITIES FROM INTERNATIONAL LAW CONCERNING DIPLOMATIC PERSONNEL.

2. IMMUNITY FROM CIVIL JURISDICTION IN MATTERS ARISING FROM PERFORMANCE OF OFFICIAL DUTIES DERIVED FROM ARTICLE XVII OF ABOVE-CITED 1953 AGREEMENT INCLUDES IMMUNITY FROM OBLIGATION TO TESTIFY AS WITNESS REGARDING SUCH MATTERS. THE SCOPE OF OFFICIAL ACTS IMMUNITY FOR PERSONNEL COVERED
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PAGE 02 STATE 119060

BY 1953 AGREEMENT IS COEXTENSIVE WITH CIVIL IMMUNITY

ACCORDED TO ADMINISTRATIVE AND TECHNICAL STAFFS OF DIPLO-
MATIC MISSIONS BY ARTICLE 37(2) OF VIENNA CONVENTION IN
THIS REGARD.

3. ACCORDINGLY, IMMUNITY OF MSGT HUNT FROM ETHIOPIAN
COURT'S JURISDICTION TO CALL HIM AS A WITNESS DEPENDS
UPON WHETHER SUBJECT MATTER OF REQUESTED TESTIMONY RELATES
TO MATTERS ARISING FROM PERFORMANCE OF HIS OFFICIAL
DUTIES. PRELIMINARY JUDGMENT ON WHETHER THIS IS OFFICIAL
DUTY CASE SHOULD BE MADE BY USG. IF CASE INVOLVES OF-
FICIAL DUTY, DEPT WILL NEED FACTS IN ORDER TO DETERMINE
WHETHER WAIVER COULD BE APPROPRIATE FOR FORMAL OR IN-
FORMAL RESPONSE TO COURT'S REQUEST (SEE 2 FAM 221.5).

4. IF MSGT HUNT IS NOT RPT NOT BEING ASKED TO TESTIFY
ABOUT OFFICIAL DUTY MATTERS, WE HAVE NO LEGAL BASIS TO
REFUSE TO RESPOND TO COURT'S REQUEST. IF ACCEPTABLE TO
COURT, THERE WOULD BE NO OBJECTION TO TAKING OF TESTIMONY
BY DEPOSITION ON WRITTEN QUESTIONS RATHER THAN COURT AP-
PEARANCE. PRESUMABLY, QUESTIONS FROM BOTH PROSECUTION AND
DEFENSE WOULD BE TRANSMITTED THROUGH COURT AND MOFA FOR
THIS PURPOSE. SUCH A PROCEDURE MIGHT MINIMIZE LIKELIHOOD
OF FUTURE ATTEMPTS TO INVOLVE USG PERSONNEL IN LOCAL JU-
DICIAL PROCEEDINGS. IF CASE DOES NOT INVOLVE OFFICIAL
DUTY AND IF EMBASSY SEES MERIT IN AVOIDING COURT APPEAR-
ANCE, IT MAY RESPOND TO MOFA BY INDICATING THAT MSGT HUNT
WILL TESTIFY, BUT THAT USG WOULD PREFER, IN ORDER TO
MINIMIZE INTERFERENCE WITH PERFORMANCE OF HIS DUTIES, THAT
TESTIMONY BE GIVEN AS DEPOSITION IN RESPONSE TO WRITTEN
QUESTIONS IF SUCH A PROCEDURE IS COMPATIBLE WITH ETHIOPIAN
JUDICIAL PROCEDURES. EMBASSY SHOULD NOT, OF COURSE, SUG-
GEST IMMUNITY FOR UNOFFICIAL ACTS.

5. DOD CONCURS. KISSINGER

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